

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

**1. General**

**A. Call to Order and Roll Call.** The Board of Public Accountancy was called to order at 8:32 a.m. on Thursday, November 16, 2000 with Chair H. Dean Graf presiding. The roll was called with the following members present: Dean Graf, William Gaines, William Nuckolls, Nina Kavich, Richard Hoiekvam, George Klein, Michelle Thornburg and Kathleen Smith. Also present was Executive Director, Annette Harmon. The meeting was held at the Board's office at 140 North 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska.

**B. Approval of meeting agenda for November 16-17, 2000.** Moved by Gaines, seconded by Nuckolls, to approve the agenda for the November 16-17, 2000 meeting as written. On roll call vote, all members present voted aye. Motion number 1 carried.

**C. Approval of the minutes of the September 28-29, 2000 Board meeting.** Moved by Smith, seconded by Gaines, to approve the minutes as written. On roll call vote, all members present voted aye. Motion number 2 carried.

**2. Public Comment Period**

Ken Brauer and Zane Fairchild from the Nebraska Society of Independent Accountants were present to observe discussion on proposed legislative issues.

**3. Consent Agenda**

**Approval of Consent Agenda by Roll Call Vote.** Moved by Smith, seconded by Hoiekvam, to approve the Consent Agenda. Motion withdrawn until further information was received.

**4. New Business**

**A. NASBA. 1. Attendance at Executive Director's Conference.** Moved by Smith, seconded by Kavich, to approve the expenses for attendance of the Executive Director and Gerald Batliner to attend the Executive Director's conference February 4-7, 2001 in Charleston, South Carolina. On roll call vote, all members present voted aye. Motion number 3 carried.

**2. Attendance at Legal Counsel Conference.** Moved by Klein, seconded by Hoiekvam, to register Lynn Melson to attend the Legal Counsel Conference February 4-6, 2001 and to apply to NASBA for a scholarship for her attendance; if unable to obtain a scholarship from NASBA, then the Board will pay for her expenses to attend. On roll call vote, all members present voted aye. Motion number 4 carried.

Moved by Smith, seconded by Kavich, to approve the expenses for attendance of Robert Gruit to the Legal Counsel Conference if Lynn Melson receives a scholarship. On roll call vote, all members present voted aye, except Members Hoiekvam and Klein who voted nay. Motion number 5 carried.

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

Moved by Gaines, seconded by Kavich, that the Board formally request that Lynn attend our regularly scheduled Board meetings, including hearings. Motion withdrawn. The Board directed the Executive Director to make such request.

**3. EASTF Exposure Draft.** The Examination Administration Security Task Force (EASTF) has sent out an exposure draft for comment by December 8, 2000 regarding security measures for the CPA examination. The Board previously approved many of their recommendations for examination security at the September 28-29, 2000 meeting. However, the exposure draft has a few changes. Moved by Smith, seconded by Nuckolls, to approve the suggested changes to the Board's procedures on examination security and to respond to the Exposure Draft accordingly. On roll call vote, all members present voted aye. Motion number 6 carried.

**B. Attendance at AICPA Computerized Exam Issues Meeting.** The AICPA has invited Board personnel involved with administration of the CPA Examination to a forum in Kansas City on January 11-12, 2001. Moved by Smith, seconded by Gaines, to approve the expenses for the Executive Director, Gerald Batliner and two Board members (preferably the Chair of the Board and the Chair of the Exam and Licensing Committee) to attend the AICPA Computerized Exam Issues Meeting. On roll call vote, all members present voted aye. Motion number 7 carried.

**5. Discussion on Items from "Advance" - Topics Continued**

The Board recapped its discussions from the July and September 2000 meetings on changes to the Public Accountancy Act. Issues that were ancillary to that discussion were "parked" at the July meeting and were discussed in September. Issues discussed at this meeting included components of the CPA certificate and a definition of the practice of public accountancy.

**6. Legislation and Rules**

**A. Exam Changes.** Since the Uniform CPA examination is moving towards a computerized format, changes will need to be made to the Public Accountancy Act to allow such a delivery format. Moved by Smith, seconded by Gaines, to move forward with legislation as proposed (with one change to section 1-106) to add good moral character, to increase the amount of the fee limit, and to change the wording required for reexamination when the four parts are replaced as one exam. On roll call vote, all members present voted aye. Motion number 8 carried.

**9. Educational Advisory Committee**

**A. Report from the Chair.** Nina Kavich, Committee Chair, reported that the programs of suggested coursework meeting the 150-hour subject requirements had been reviewed for all colleges and

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

universities that had submitted them to the office; and that we were in the process of reviewing any questions or additional coursework they had submitted for review. A grid of suggested coursework to satisfy each subject requirement is being done for each college and university. The Committee is attempting to get the information out to the institutions and ask that they share it with their students; although the ultimate burden still rests with the applicant. The Educational Requirements Guidelines have been shared with them with a request to pass them on to all their advisors and students; and the current Guidelines have also been posted on the Board's web site.

**10. Report of Continuing Education Committee**

**A. Ratification of staff program evaluations since last meeting.** Moved by Gaines, with the Committee's recommendation, to approve the Statistical Summary Report of Programs (that gives statistics of course denials, approvals and reconsideration requests) that have been evaluated and approved by the CPE Committee since the last meeting. On roll call vote, all members present voted aye. Motion number 9 carried.

**3. Consent Agenda**

**Approval of Consent Agenda by Roll Call Vote.** Moved by Smith, seconded by Hoiekvam, to approve the Consent Agenda. On roll call vote, all members present voted aye. Motion number 10 carried.

**A. Published Notice of Meeting.** Pursuant to call and published notice, the notice of meeting is herewith attached.

**B. Review of Board Budget Status Report.** The Board reviewed the October 31, 2000 Budget Status Report.

**C. Approval of September and October 2000 disbursements.** The Board reviewed and approved the September and October 2000 disbursements.

**D. Office Management Report.** The Board reviewed a report on permits and registrations issued as of October 25, 2000. Prior year's statistics were also reviewed for comparison.

**11. Report of Examination & Licensing Committee**

**A. Ratification of initial permits to practice issued; certificates issued.** Moved by Nuckolls, with the Committee's recommendation, to ratify the initial permits to practice and certificates issued by examination and reciprocity. On roll call vote, all members present voted aye. Motion number 11 carried.

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

**B. Application(s) for Reinstatement to Active Permit.** Moved by Nuckolls, with the Committee's recommendation, to approve the application for Reinstatement to Active Permit. On roll call vote, all members present voted aye. Motion number 12 carried.

**C. Office and Workspace Guidelines.** The Board discussed its current policies on office and workspace and some proposed changes. The Board directed personnel to check with other states and compare policies and report back to the Board.

**The Board recessed for the day at 4:08 p.m. on Thursday, November 16, 2000.**

**The Board reconvened at 8:36 a.m. on Friday, November 17, 2000.**

The roll was called with the following members present: Dean Graf, William Gaines, William Nuckolls, Nina Kavich, Richard Hoiekvam, George Klein, Michelle Thornburg and Kathleen Smith. Also present were Executive Director, Annette Harmon, and visitors Ken Brauer and Zane Fairchild.

**8. Presentation on XYZ Designation**

**Bill Strain, CPA,** appeared before the Board and gave a brief presentation on the AICPA's new global professional credential for CPAs and non-CPAs, "Cognitor."

**11. Report of Examination & Licensing Committee**

**D. Experience Requirement Request.** The Committee is referring this item to the Enforcement of Professional Conduct Committee.

**E. Request for CPA Certificate Issuance.** Moved by Nuckolls, seconded by Smith, that Legal Counsel be requested to research the case law regarding the issuance of a certificate and or permit where the statutes do not require a showing of good moral character or where there has been a previous felony conviction. On roll call vote, all members present voted aye. Motion number 13 carried.

Moved by Hoiekvam, seconded by Klein, to accept the application by the applicant. After discussion, the motion was withdrawn.

**F. Review and Approval of Applications.** Moved by Nuckolls, with the Committee's recommendation, to approve the revised applications to sit for the CPA examination in May 2001, and an application for out of state candidates to be proctored. On roll call vote, all members present voted aye. Motion number 14 carried.

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

**CLOSED MEETING**

**Closed Meeting.** Moved by Kavich, seconded by Gaines, that the Board go into closed session at 11:01 a.m. for the purpose of enforcement, personnel and litigation. On roll call vote, all members present voted aye. Motion number 15 carried. Member Hoiekvam recused himself from the closed session and left the conference room during the closed meeting.

**Return to Open Meeting.** Moved by Nuckolls, seconded by Gaines, that the Board return to open session at 1:08 p.m. On roll call vote, all members present voted aye. Motion number 16 carried.

**14. Formal Hearing on Complaint #00-04: Jeffrey Benne**

Pursuant to the Board's Notice of Complaint and Formal Hearing, a hearing was held November 17, 2000 at 1:15 p.m. Robert T. Gruit represented the Board. Mary Gaines represented the Respondent, Jeffrey Benne, who was also present. R. Kent Radke was the hearing officer. Participating in the hearing were Board members: Dean Graf, William Gaines, William Nuckolls, Nina Kavich, Richard Hoiekvam, George Klein, Michelle Thornburg and Kathleen Smith. The hearing concluded at 3:32 p.m.

**CLOSED MEETING**

**Closed Meeting.** Moved by Smith, seconded by Gaines, that the Board go into closed session at 3:36 p.m. for the purpose of enforcement. On roll call vote, all members present voted aye. Motion number 17 carried.

**Return to Open Meeting.** Moved by Smith, seconded by Gaines, that the Board return to open session at 5:08 p.m. On roll call vote, all members present voted aye. Motion number 18 carried.

**13. Report of Enforcement of Professional Conduct Committee**

**A. Complaint Consent Agenda.** Moved by Smith, with the Committee's recommendation, to approve the Complaint Consent Agenda, with the exception of removing Complaint #9899008. On roll call vote, all members present voted aye. Motion number 19 carried.

Moved by Smith, seconded by Gaines, to write the Attorney General and formally request that the Board be allowed to retain outside Legal Counsel in order to acquire an Injunction against Robert Chisholm. On roll call vote, all members present voted aye. Motion number 20 carried.

**B. Findings of Fact/Conclusions of Law for Gerard Forget: Complaint #99-07.** Moved by Smith, seconded by Klein, to have personnel request that Robert Gruit write the Decision and Order

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

in accordance with the Board's directives for Board review at the January meeting. On roll call vote, all members present voted aye. Motion number 21 carried.

**C. Complaint #00-03 Violation of Auditing Standards.** The Board recommends writing the Department of Education that the Enforcement of Professional Conduct Committee has investigated the complaint and that the Respondent has responded satisfactorily to the Board and it has closed the complaint. Moved by Smith, with the Committee's recommendation, to close the complaint and to notify the Respondent and Complainant of the closure. On roll call vote, all members present voted aye. Motion number 22 carried.

**D. Complaint #00-05 Failure to Follow Auditing Standards.** The Board directed further investigation of the complaint.

**E. Complaint #00-06 Acts Discreditable to the Profession and Failure to Follow GAAP.** The Respondent has signed a Litigation Monitoring Consent Order and the case is now being monitored.

**F. Complaint #00-07 Violation of Independence Standards.** The Board directed further investigation of the complaint.

**G. Complaint #00-08 Firm has failed to sign Litigation Monitoring Consent Order.** The firm has reported to the Board that the lawsuit has been settled and has provided the relevant documents to the Board. Moved by Smith, with the Committee's recommendation, to close the complaint. On roll call vote, all members present voted aye. Motion number 23 carried.

**H. Complaint #00-09 Acts Reflecting Adversely on Fitness to Practice.** The Board directed personnel to write the complainant that the Enforcement of Professional Conduct Committee has reviewed the complaint, and that it determined that the complaint is in essence a billing dispute and is not within the Board's scope of authority. The Board directed personnel to write the respondent suggesting that, as a matter of professional courtesy, the respondent should write the complainant regarding the issues he raised. Moved by Smith, with the Committee's recommendation, to close the complaint. On roll call vote, all members present voted aye. Motion number 24 carried.

**I. Complaint #00-10 Competency/ Technical Standards.** The Board directed personnel to write the complainant that the Enforcement of Professional Conduct Committee has reviewed the complaint and determined that there has not been any determination that the ex-spouse's tax return was prepared incorrectly and that the complainant has no standing in regard to the ex-spouse's tax return. The complainant should be advised to contact a professional to prepare the complainant's tax return in accordance with that professional's judgment. Moved by Smith, with the Committee's recommendation, to close the complaint. On roll call vote, all members present voted aye. Motion number 25 carried.

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**  
**MINUTES**

**November 16-17, 2000**

**J. Complaint #00-11 Violation of 151-161 Relating to Use of Terms.** Moved by Smith, with the Committee's recommendation, to prepare a Cease and Desist Order to be sent to the Respondent regarding usage of language reserved for CPAs. On roll call vote, all members present voted aye. Motion number 26 carried.

**K. Complaint #00-12 Form of Practice Violation.** The Board directed personnel to obtain an Attorney General's opinion for review at the next meeting.

**L. Look Back Agreement.** NASBA has asked us to make a determination regarding the "Look Back Agreement" for firms with independence violations pursuant to the SEC request. The Board will further review at the next meeting.

**7. Formal Hearing on Complaint #00-01: Rodney Zwygart.**

In lieu of attending the formal hearing scheduled for Thursday, November 16, 2000 at 1:00 p.m., Mr. Zwygart has entered into a Stipulation and Consent Order. Zwygart has stipulated to violations of the Public Accountancy Act, Section 1-137 (2) Dishonesty, fraud, or gross negligence in the practice of public accountancy, and (4) Violation of a rule of professional conduct adopted and promulgated by the Board, and Chapter 5 of Title 288 of the Revised & Substituted Rules of the Board: Section 003 Integrity and Objectivity; Section 004.01 Competence; and Section 007.01 Acts Discreditable; and agreed to the following: 1) that he would not perform any business liquidation tax returns unless reviewed by a CPA chosen by the Board and at his own expense for a period of two years from the date of the Consent Order; 2) that he complete 32 hours of CPE in the advanced tax and/or the ethics area within one year of the date of the Consent Order; that no more than 50% of the CPE credit could be in self study; and that the 32 hours is above and beyond the normal requirement for renewal of a permit in this state; and 3) that he complete the AICPA Ethics exam, receive a passing grade and submit the report showing the passing grade within 90 days of the signing of the Consent Order. Moved by Smith, seconded by Nuckolls, to accept the Stipulation and Consent Order signed by Rodney Zwygart. On roll call vote, all members present voted aye. Motion number 27 carried.

**15. Adjournment**

It was moved by Smith, seconded by Thornburg, that the Board adjourn at 5:33 p.m. On roll call vote, all members present voted aye. Motion number 28 carried.

Submitted by,

William Nuckolls  
Secretary